

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 132 OF 1991

The State of Maharashtra

...Appellant.

V/s

Avinath Narayan Surwase,
age 25 yrs.
R/o. North Kasba, H.No.713,
Solapur

...Respondent.

Mr. D.P. Adsule, APP for the appellant - State.

CORAM: V.M.KANADE,J.

DATE: 21ST FEBRUARY, 2005

ORAL JUDGMENT:

1. State has preferred this appeal against acquittal challenging the judgment and order passed by the Chief Judicial Magistrate, Solapur in R.C.C. No. 273 of 1986. By the said judgment and order dated 22/11/1990, the Chief Judicial Magistrate was pleased to acquit the accused for the offence punishable under section 420 of the Indian Penal Code.

2. Prosecution case is that the complainant Avinath Jadhav and Prakash Trimal were friends and the accused was acquainted with the complainant and Prakash Trimal. Prosecution case is that the accused made a representation to the complainant that his brother was serving in the Railway Department and that he could give him employment in the Railway Department. The

accused, therefore, demanded certain amount from the complainant and told him to give him Rs 5000/-. He represented that this amount was to be given to the Superior Officials in Railway Department. It is contended that accordingly complainant paid an amount of Rs 5000/- to the accused on 8/8/1986 and, thereafter, accused gave an order in which it was written that the complainant and Prakash Trimal should join their duties on 18/8/1986. It is alleged that, thereafter, complainant came to know that he was deceived and, therefore, he registered an offence against the accused.

3. The learned Counsel APP appearing for the State has taken me through the evidence adduced by the prosecution and the judgment and order of the Trial Court. From the evidence, it can be seen that the prosecution has not proved the interview call and appointment letter. From the evidence, it can be seen that no independent witness has been examined to show that the accused had made a representation to the complainant that he would give them service in the Railway Department. Prosecution has not examined handwriting expert to prove that the letter was written in the handwriting of the accused. Thus the initial burden which was on the prosecution has not

been established.

4. Thus, in my view there is no reason to interfere with the finding recorded by the Trial Court that the prosecution has not proved beyond the reasonable doubt that the accused had committed the said offence. I do not see any reason to take a different view and there is, therefore, no reason to interfere with the finding recorded by the Trial Court. The judgement and order of the Trial Court is confirmed. Criminal Appeal is dismissed.

V.M. KANADE, J.